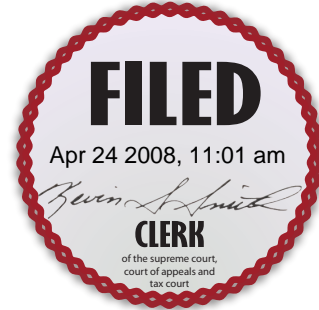


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

SUSAN ANN CRAGER
Garrett, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

SUSAN ANN CRAGER,

Appellant-Respondent,

vs.

JOHN CRAGER,

Appellee-Petitioner.

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No. 17A04-0707-CV-415

APPEAL FROM THE DEKALB SUPERIOR COURT
The Honorable Monte L. Brown, Judge
Cause No. 17D02-0606-DR-0071

April 24, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Susan Ann Crager appeals the decree of dissolution of her marriage to appellee-petitioner John Crager, as modified by the trial court's ruling following Susan's motion to correct error. We summarize and restate Susan's arguments as follows: (1) the trial court erroneously valued certain real property; and (2) the trial court erroneously found John's testimony regarding his assets and income to be credible. Finding no error, we affirm.

FACTS

John and Susan were married on November 8, 1980, and John filed a petition to dissolve the marriage on June 9, 2006. No children were born of the marriage. Following an April 27, 2007, hearing at which both parties were represented by counsel, the trial court entered a decree of dissolution dividing the marital estate equally. In pertinent part, the May 11, 2007, decree provides as follows:

REAL ESTATE

11. That during the course of their marriage, certain real estate on County Road 20, DeKalb County, Indiana [C.R. 20 real estate], was acquired by gift from [Susan's] parent(s), originally in [Susan's] name alone. . . . The Court finds that the value of the C.R. 20 real estate when originally acquired by [Susan] had a value of [\$6,000.00].
12. That during the years said C.R. 20 real estate was owned, [John and Susan] both contributed significantly to the improvements made to said real estate. Approximately ten (10) years after the C.R. 20 real estate was acquired, it was sold for an amount in excess of [\$90,000.00]
13. That the proceeds from the sale of the C.R. 20 real estate was [sic] deposited into a jointly held account in the names of [John and

Susan] and the [marital residence, valued by the trial court at \$112,000] was thereafter purchased, in the joint names of [John and Susan], largely, if not entirely, with the proceeds from said jointly held account.

14. The Court finds that said C.R. 20 real estate, when originally acquired, had a value of [\$6,000.00] and that [John] acknowledged and agreed that the amount of [\$6,000.00] should be credited or awarded to [Susan]. Accordingly, to award said credit, the Court finds that for division of property purposes, the real estate described in paragraph 8 above has a value of [\$106,000]. (\$112,000.00 market value less \$6,000.00, the value of C.R. 20 real estate when first acquired by [Susan].)

MISCELLANEOUS PERSONAL PROPERTY

26. Set over to [John], as his sole property, free and clear of any claim thereto by [Susan], is the stainless steel Smith & Wesson .357 caliber revolver . . . [Susan] shall, within thirty (30) days of the date of this order, deliver to [John] the revolver . . . herein referred to.

ADJUSTMENTS AND EQUALIZATION PAYMENT

39. The disparity between [John's] (\$5,279.00) portion of the net (value of assets less value of debts) marital estate and [Susan's] (\$109,567.44) portion of the net (value of assets less value of debts) marital estate is [\$104,288.44).
40. The Court finds, pursuant to I.C. 31-15-7-5, that an equal division and distribution of the marital property and marital debts between [John and Susan] is fair, just, and reasonable
41. In order to accomplish a fair, just, and reasonable division and distribution of the marital assets and debts, [Susan] shall pay to [John], the sum of [\$52,144.22], which amount shall represent a judgment in favor of [John] and against [Susan]. . . .

Appellant's Br. p. 17-25.¹

On June 11, 2007, Susan filed a motion to correct error, raising the following errors, among others, as described by the trial court:²

- a) That the Court erred in limiting the credit given to [Susan] for the marital real estate to the amount of [\$6,000.00];

- d) The Court erred in awarding the riding lawnmower to [John]; and
- e) That the Court erred in Ordering [Susan] to deliver the stainless steel Smith & Wesson .357 handgun for the reason that [John] is precluded from purchasing, receiving or possessing a firearm under Federal Law.

Order on Motion to Correct Error p. 1-2.³ On June 28, 2007, the trial court granted the motion in part, ordering in pertinent part as follows:

- 8. That, at the final hearing on this matter, [John] testified the [C.R. 20 real estate] had a value of [\$5,000 to \$6,000]. While [Susan] disagreed with that value, the only evidence introduced by [Susan] in opposition to that testimony was [Susan's] own testimony that she believed said real estate had a value greater than [\$5,000 to \$6,000]. [Susan] submitted no evidence to establish a specific value [and instead] merely disagreed with [John's] valuation.

- 12. That, but for [John's] agreement to award [Susan] [\$6,000] representing his opinion of the value of said real estate at the time it was gifted to [Susan], the Court would not have awarded any credit to [Susan]

¹ Susan appended the decree to her brief but did not include it in her appendix. Inasmuch as she consecutively paginated her brief and the decree, we will cite to it as part of her brief.

² Neither Susan's motion nor John's response thereto, if any, are included in the record on appeal.

³ The documents in the appendix are not consecutively paginated.

14. That [Susan's] Motion to Correct Errors as it relates to the valuation of the real estate and the credit awarded to [Susan] is overruled and denied.

20. That [Susan's] Motion to Correct Errors concerning the lawn mower is overruled and denied for the reason that the allegation of error appears to be only that [Susan] disagrees with the Court's decision.
21. That [Susan's] Motion to Correct Errors regarding the handgun is granted to the extent that [Susan] shall transfer the subject handgun to [John] through a Federal Firearms License (F.F.L.) holder. . . . In the event [Susan] is unable to have said handgun transferred to him by the F.F.L. holder within thirty (30) days of the date of this Order, then, and in that event, the stainless steel Smith & Wesson .357 caliber revolver shall become the property of [Susan] and [Susan] shall, immediately thereafter, pay to [John] the sum of [\$350] representing the value assigned to the handgun.

Id. at 5-14. Susan now brings this pro se appeal.

DISCUSSION AND DECISION

Before delving into the substance of Susan's arguments, we observe that John has not filed an appellee's brief. Where no appellee's brief has been filed, the judgment may be reversed if the appellant's brief presents a prima facie case of error. Van Wieren v. Van Wieren, 858 N.E.2d 216, 221 (Ind. Ct. App. 2006). Prima facie error is "error at first sight, on first appearance, or on the face of it." Id.

I. Valuation of C.R. 20 Real Estate

Susan first argues that the trial court erroneously concluded that the original value of the C.R. 20 real estate was \$6,000. Trial courts have broad discretion in ascertaining the

value of property in a dissolution action and their valuation will not be disturbed absent an abuse of that discretion. Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). In other words, we will not reverse the trial court unless the decision is clearly against the logic and effect of the facts and circumstances before it. Id. As we engage in this analysis, we will not weigh evidence and will consider the evidence in a light most favorable to the judgment. Id.

Here, the trial court based its valuation of the real estate on John's testimony that he believed that the property was originally worth \$5,000 to \$6,000. Tr. p. 83. Initially, we note that although Susan argues on appeal that John was not qualified to testify about the value of the property because he is not a licensed appraiser, she did not object to this testimony before the trial court. Consequently, she has waived this argument. See Keown v. Keown, ---N.E.2d ---, 2008 WL 901803, *4 (Ind. Ct. App. 2008) (holding that it was proper for the trial court to consider wife's estimate of the cost of sale of the marital residence when husband failed to object to the estimate or offer his own, contrary, evidence).

In any event, as the trial court observed, although Susan disagreed with John's valuation of the property, "the only evidence introduced by [Susan] in opposition to that testimony was [Susan's] own testimony that she believed said real estate had a value greater than [\$5,000 to \$6,000]. [Susan] submitted no evidence to establish a specific value [and instead] merely disagreed with [John's] valuation." Order on Motion to Correct Error p. 5-6. Thus, Susan may not now complain that the evidence of the property's value is inaccurate or the trial court's reliance thereon improper. See Spivey v. Topper, 876 N.E.2d 781, 787-88 (Ind. Ct. App. 2007) (holding that wife was estopped from arguing that appraisal of home's

value was inaccurate when the only evidence she presented was her own testimony that she believed the home was worth “less than that”); In re Marriage of Church, 424 N.E.2d 1078, 1081 (Ind. Ct. App. 1981) (holding that a party who fails to introduce evidence of the specific value of the marital residence is estopped from appealing the distribution based on that absence of evidence). Inasmuch as the trial court’s valuation of the real estate’s original value at \$6,000 is supported by the only evidence thereof in the record, we decline to find that the trial court abused its discretion in this regard.

II. Witness Credibility

Finally, Susan argues that the trial court erroneously relied on the testimony of John and his employer in valuing and awarding certain personal and real property and in dividing the marital estate. The division of marital assets lies within the sound discretion of the trial court, and we will reverse only for an abuse of that discretion. J.M. v. N.M., 844 N.E.2d 590, 599 (Ind. Ct. App. 2006), trans. denied. When we review a challenge to the trial court’s division of marital property, we may neither reweigh the evidence nor assess the credibility of witnesses, and we will consider only the evidence most favorable to the trial court’s disposition of marital property. Daugherty v. Daugherty, 816 N.E.2d 1180, 1187 (Ind. Ct. App. 2004). Susan’s arguments stem solely from her contention that John and his employer were not credible witnesses and the trial court, therefore, erred by believing their testimony.

Inasmuch as we cannot and will not second-guess the trial court's assessment of witness credibility, this argument must fail.⁴

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.

⁴ Susan also argues that the trial court erred by awarding John the Smith & Wesson revolver because of the protective order preventing him from possessing a firearm. As noted above, however, the trial court corrected this error following Susan's motion to correct error. Consequently, we need not address this argument.

Additionally, Susan contends that the trial court erred by preventing her from presenting a witness who was scheduled to testify. She does not, however, identify the witness or provide a citation to the record in support of this assertion. Our review of the record reveals no such incident.

We are unable to address Susan's remaining arguments for lack of cogency and failure to cite to the record or supporting authority.